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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Modoc)

In re W. N., a Person Coming Under
the Juvenile Court Law.

MODOC COUNTY DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

W. N.,

Appellant.

C062172

(Super. Ct. No. JP08002)

Minor W. N. appeals from the juvenile court's order entered at the 18-month review hearing, returning him to the custody of his mother with family maintenance services. (Welf. & Inst. Code,¹ §§ 366.22, 395.) He contends the juvenile court abused its discretion, as the evidence established a substantial risk of detriment from return to his mother. We shall affirm.

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

BACKGROUND

In November 2007, Lassen County Health and Social Services Agency filed a section 300 petition on behalf of the minor, then six years old, and his two older half-siblings, alleging the mother had failed to protect the minors from physical abuse and cruelty inflicted by mother's live-in boyfriend, J.R. The petition also alleged that the minors were suffering serious emotional damage as a result of J.R.'s abuse and mother's failure to protect.

Specifically, the petition alleged that J.R. had rubbed the minor's nose in the minor's soiled trousers after the minor had lost bowel and bladder control, and that J.R. had also yelled at the minor and repeatedly banged the minor's head into a wall. The petition also alleged that J.R. had choked the minor's older brother, picked him up and thrown him into a wall, and had hit the minor's older sister in the head. The social worker's report stated that the minor and his siblings had physical manifestations of stress and abuse, including speech impediments and tremors, and that the older siblings expressed fear.

The allegations of the petition were sustained under subdivisions (b), (c), (i), and (j), of section 300. The minor was removed from the home and placed with his maternal grandparents. His half-siblings were placed with their father, who was granted sole physical and legal custody. The court declared the minor a dependent child of the court and ordered reunification services be provided to mother.

Mother was still living with J.R. at the time of the May 2008 status review. They had, however, moved to Modoc County. Mother had not yet begun domestic violence, anger management, or parenting classes. She had submitted to a psychological evaluation but the social worker did not yet have the results. The court ordered continued reunification services and the matter was transferred to Modoc County.

The 12-month review hearing was set for December 2008. Mother had completed the parenting and mental health components of her case plan. She had also enrolled in, but not completed, a domestic violence program. She was still living with J.R. and both she and J.R. continued to deny the allegations in the petition were true. Modoc County Department of Social Services (the department) had expanded the case plan to include anger management and parenting programs for J.R., as well as a mental health assessment with participation in any recommended services. J.R. had not enrolled in the domestic violence program that had already been recommended by Lassen County Health and Social Services Agency.

The minor began participating in unsupervised overnight visits with mother and Rodriguez in November 2008. He also had regular telephonic visits with his half-siblings in Las Vegas and had traveled there for an in-person visit. The court ordered continued out-of-home placement and further reunification services.

In March 2009, the social worker reported that J.R. had completed parenting instruction, but not the other components of

the plan. The minor said that overnight visits with mother were good and that J.R. was no longer mean to him. By the June 2009 contested review hearing, mother and J.R. had married. Mother had completed her service plan and the minor was participating in unsupervised overnight visits two times a week. Although J.R. considered compliance with the service plan as "jumping through hoops," he had completed the plan. Both mother and J.R. continued to deny the allegations in the petition were true.

The social worker recommended return of the minor to mother with family maintenance services. The maintenance plan included provisions for public schooling, overnight visits with the maternal grandparents twice each week, family counseling, and the minor's continued personal therapy with his current therapist.

The minor presented evidence from several witnesses, including his therapist, to support his argument that return to mother would create a substantial risk of detriment to his safety.

Johanna Kilpatrick had been the minor's teacher for the past year and one-half. When he first came into her first grade class, he was below the "benchmark" for word recognition and basic phonics. His speech was generally incomprehensible or off-topic. He was "very tense," spoke little, and did not participate. Since that time, he has made friends and enjoys himself. He can now speak in complete sentences, tell stories, relate events, and offer opinions.

Kilpatrick believed home visits were detrimental to the minor. She testified that, after his visits, he goes through periods where he is more agitated and clingy, and seeks more contact with adults. During these periods, his learning declines and regresses. As for mother's interest in home schooling the minor, Kilpatrick opined that home schooling would not be appropriate, as he would do better in a school where he could take advantage of special expertise and could communicate abuse if it occurred.

Amy McKee, a speech pathologist and resource specialist at the minor's school, had also been working with the minor for the past year and one-half. When she first began working with him, his language was very delayed and he had great difficulty conveying information. Since then, the minor had shown "great growth." He also is a bit of a tattletale, acting as "a reporter of information" about his peers. He still, however, has "difficulty processing some questions." It was McKee's opinion that he could have a hard time articulating future abuse, as he requires a lot of prompting and guiding, and has a hard time sequencing things.

McKee, like Kilpatrick, noted that the minor became clingy after home visits. She believed it to be a result of "nervousness of the possibility of things changing." She also did not think home schooling would be good for the minor in light of his need for specialized services and to allow for social interaction with his peer group.

The minor's therapist, Karl Williams, first began seeing the minor in May 2008. In the fall of 2008, when the minor had learned he may be spending time with mother, the minor was a bit shaken. Since then, the minor had been more verbal and willing to talk about the visits. The minor had relayed that the visits were going okay and that he was not really concerned about anything happening. Williams stated that the minor's body language, however, would sometimes give a different message and that the minor could be hard to read at times. He also stated that the minor has difficulty completing whole sentences and it often takes the minor a lot of time to pull together his thoughts and convey them. Thus, Williams believed he would have difficulty expressing abuse if placed in an isolated setting where he did not know anyone. When provided the information about the minor's changed conduct in school after visits, Williams stated that such behaviors may have more than one meaning, "[T]here can always be a regression when they're being reunified," but the behavior could also be a red flag.

Williams recommended that reunification be a gradual process, with visits increased incrementally over the summer months and possible full reunification in the fall of 2009. This recommendation was contingent upon monitoring by the department, and Williams further recommended public schooling, family therapy, continued therapy for the minor, and further services, including parenting education, for mother and J.R.

Mother testified that the minor had always been clingy, even before the dependency proceedings commenced, and was clingy

with her during visits. He also always had a speech impediment. Mother explained that she did not say that she wanted to home school the minor, but had said that it was an option because getting the minor to school from where she lives would require the minor spend five to six hours a day on a bus.

The juvenile court found that, although there had been some evidence (although not entirely clear) to suggest that the minor's "behavior is regressed to some degree after visits with his mother," that was not sufficient to convince the court that return to the mother was detrimental. The "two things" did not necessarily correspond, children express their reaction to changes in placements in different ways, and mother indicated the minor was always clingy. The court noted that mother and J.R. had completed the services and there was no evidence those services were inadequate or not meaningful. And although mother and J.R. did not believe the underlying allegations to be true, there was no evidence they did not take the services seriously. The court did not find a substantial risk of detriment to the minor should he be returned and found the proposed family maintenance plan appropriate to protect against any risk.

Accordingly, the court ordered the minor to stay with the grandparents for another two weeks and then return to mother with a family maintenance plan that included provisions for public schooling, overnight visits with the maternal grandparents twice each week, family counseling, and the minor's continued personal therapy with his current therapist.

The minor appeals.²

DISCUSSION

The minor contends the juvenile court abused its discretion in returning him to mother's care because, he claims, the evidence established that return would create a substantial risk of detriment. We conclude that substantial evidence supports the juvenile court's findings and order to the contrary.

In order to maintain a child in out-of-home placement rather than return the child to his or her parents at the 18-month review hearing, the court must find "by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.22, subd. (a).)

Here, the court did not find there to be a substantial risk of detriment to the minor should he be returned with the family maintenance plan in place. As noted by the court, mother and J.R. had completed the reunification services. They had also been participating in unsupervised overnight visitation for

² The department included in its brief a request for this court to take judicial notice of the superior court's file and "note that there have been no subsequent petitions or supplemental petitions filed and the minor remains placed with his mother and step-father under family maintenance." We deny the request, which fails to comply with the rule that requests for judicial notice be served and filed by way of a separate motion and attach the items for which notice is requested. (Cal. Rules of Court, rule 8.252.) Moreover, the documents, or lack thereof, in the superior court's file are irrelevant in our review of the correctness of the juvenile court's order.

seven months and the minor reported to his therapist that they were going well. The overnight visits had been recently increased to twice each week.

All of the witnesses agreed that the minor had made significant improvement in the past year and one-half. Although he still had some difficulty with communication, he was able to do so with the assistance and encouragement of McKee, Kilpatrick and Williams. He also had the support of his grandparents, with whom he had been placed during the pendency of the proceedings.

While the minor's teacher, Kilpatrick, believed the visits with mother were detrimental to the minor, causing clinginess and learning issues, the minor's therapist noted that some regression often accompanies reunification. The court echoed this sentiment. The therapist suggested reunification be gradual with full reunification in the upcoming months. The therapist also recommended continued monitoring of the family, public schooling, family therapy, continued therapy for the minor, and further services, including parenting education, for mother and J.R.

The family maintenance plan proposed by the department, and ordered by the court, incorporated the therapist's recommendations. The minor was to remain in the grandparents' home for two more weeks (where he was spending five nights with the grandparents and two nights with mother), and then move to the mother's home (where he would spend five nights with mother and two nights with the grandparents). He was to continue in public school and continue seeing his therapist. The family was

to begin family therapy and the department would be monitoring the family. Thus, the department could request additional services for mother or J.R. be ordered if the need were to present itself. And since the minor was continuing to see his therapist and attend school, his ability to report abuse was improved.

Accordingly, the evidence supports the juvenile court's findings of no substantial risk and order returning the minor to mother with family maintenance services. Because we so find, we necessarily reject the minor's related argument that the juvenile court should have exercised its discretion to continue the review hearing to delay his return to mother.

DISPOSITION

The order of the juvenile court is affirmed.

ROBIE, J.

We concur:

BLEASE, Acting P. J.

HULL, J.